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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re

Case No. 04-11065-B-11

Waterman Industries, Inc.,

Debtor.

Wells Fargo Bank, N.A.,

Adversary Proc. No. 04-1075

Plaintiff,

DC No. RBK-2

v.

Waterman Industries, Inc., AACO
Cast Products, Inc., Alhambra
Foundry Company, Ltd.,
Cominercial Casting Co.,
Commercial Enameling Co. Covert
Iron Works, Globe Iron Foundry,
Inc., Kearneys' Metals, Inc., Lufkin
Industries, Inc., Mabry Casting,
Ltd., Oil City Iron Works, Inc.,

Defendants.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING WELLS
FARGO BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT AND OIL
CITY IRON WORKS, INC.'S CROSS-MOTION FOR SUMMARY JUDGMENT**

Wells Fargo Bank, N.A.'s ("Wells Fargo") Motion for Summary Judgment and Oil City Iron Works, Inc.'s ("Oil City") Cross-Motion For Summary Judgment came on for hearing before the undersigned on December 15, 2004.

Robert B. Kaplan, Esq. of Jeffer, Mangels, Butler and Marmaro, LLP appeared on behalf of Wells Fargo. Thomas H. Armstrong, Esq. appeared on behalf of Oil City. By agreement between counsel for the respective parties, Oil City's Opposition to Wells Fargo's Motion was deemed to be Oil City's Cross-Motion for Summary Judgment on the issue regarding the relative priority of the parties' competing liens.

This document sets forth the court's findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52(a) (made applicable to this adversary

1 proceeding by Federal Rule of Bankruptcy Procedure 7052). It supplements the court's
2 findings of fact and conclusions of law and analysis as stated orally on the record at the
3 hearing. There are no triable issues as to the following material facts. Based on these
4 facts, Oil City is entitled to judgment as a matter of law on Wells Fargo's complaint for
5 declaratory relief regarding the relative priority of the parties' competing liens.

6 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

7 1. This is an adversary proceeding for declaratory relief regarding the relative
8 priority of competing liens against property of the bankruptcy estate. The court has
9 jurisdiction over this dispute pursuant to 28 U.S.C. § 1334. This is a core proceeding
10 pursuant to 28 U.S.C. § 157(b)(2)(K).

11 2. Wells Fargo is a secured creditor of the debtor, Waterman Industries, Inc.
12 ("Waterman").

13 3. Waterman executed a Credit Agreement dated December 20, 2000, which
14 granted to Wells Fargo a security interest in, *inter alia*, all of Waterman's equipment.

15 4. Wells Fargo properly perfected its security interest.

16 5. Wells Fargo has filed a proof of secured claim in this case in the amount
17 of \$10,389,447.03.

18 6. Wells Fargo's collateral includes certain die casts and molds owned by
19 Waterman and used by Waterman's foundry vendors to produce rough castings for use in
20 Waterman's production process ("Foundry Patterns").

21 7. Oil City is one of Waterman's foundry vendors.

22 8. Oil City contracted with Waterman to perform foundry work, *i.e.*, to
23 produce castings for use in Waterman's production process for which Oil City has not
24 been paid.

25 9. Oil City is lawfully in possession of 290 Foundry Patterns delivered by
26 Waterman to Oil City in October 2002.

1 10. At the request of Waterman, Oil City also altered, repaired and improved
2 the Foundry Patterns, for which Oil City has not been paid.

3 11. Oil City filed a proof of secured claim in this case in the amount of
4 \$210,128.14.

5 12. Oil City holds a valid possessory lien against the Foundry Patterns in its
6 possession, and has the right to retain possession of those Foundry Patterns to secure
7 payment for the foundry work and services it provided to Waterman, pursuant to
8 California Civil Code §3051 which states in pertinent part:

9 Every person who, while lawfully in possession of an article of personal property,
10 renders any service to the owner thereof, by labor or skill, employed for the
11 protection, improvement, safekeeping, or carriage thereof, has a special lien
12 thereon, dependent on possession, for the compensation, if any, which is due to
13 him from the owner for such service; a person who makes, alters, or repairs any
14 article of personal property, at the request of the owner, or legal possessor of the
15 property, has a lien on the same for his reasonable charges for the balance due for
16 such work done and materials furnished, and may retain possession of the same
17 until the charges are paid; and foundry proprietors and persons conducting a
18 foundry business, have a lien, dependent on possession, upon all patterns in their
19 hands belonging to a customer, for the balance due them from such customers for
20 foundry work; . . .

21 This section shall have no application to . . . any vehicle, as defined in Section 670
22 of the Vehicle Code, which is subject to registration pursuant to that code

23 13. Wells Fargo's contractual lien against the Foundry Patterns is prior in time
24 to Oil City's possessory lien.

25 14. However, pursuant to California Commercial Code section 9333(b), Oil
26 City's possessory lien on the Foundry Patterns has priority over Wells Fargo's contractual
27 lien.

28 15. California Civil Code §3051a limits the possessory lien which Oil City can
claim against the Foundry Patterns under §3051 to the amount of \$300 if Oil City was
required to, but failed to give "actual notice in writing either by personal service or by
registered letter addressed to the holder of legal title" to the Foundry Patterns. Such
notice was required only if Oil City performed the work for which it claims a lien under §

1 3051 "at the request of any person other than the holder of legal title." If such notice was
2 required and not given, Oil City's possessory lien in excess of \$300 is invalid vis-a-vis
3 the rights of the "holder of legal title."

4 16. Oil City did not give actual notice in writing to Wells Fargo, as defined in
5 § 3051a, prior to performing the foundry work and services requested by Waterman.

6 17. The issue presented for resolution in this adversary proceeding is whether
7 Wells Fargo was the "holder of legal title" to the Foundry Patterns and was entitled to
8 receive notice from Oil City pursuant to § 3051a.

9 18. As a general rule, a mortgagee holds no title to property in which it holds a
10 security interest. *Hillard v. Bank of America National Trust and Savings Association*,
11 102 Cal.App. 2d 730, 732 (1951); *Timm Aircraft Corporation v. Byram*, 34 Cal. 2d 632,
12 637 (1950); *Pacific Finance Corporation v. Hendley*, 119 Cal.App. 697, 703-704 (1932);
13 *Jolly v. Thornton*, 40 Cal.App. 2d 819-821 (1940); *Diggs v. PG&E*, 57 Cal.App. 57, 63
14 (1922).

15 19. Waterman was at all times the "holder of legal title" to the Foundry
16 Patterns in Oil City's possession, within the meaning of Cal.Civil Code § 3051a.

17 20. Oil City performed the work for which it claims a lien under § 3051 at the
18 request of Waterman.

19 21. Therefore, Oil City was not required to give notice to Wells Fargo as
20 defined in § 3051a.

21 22. The decisions of *Hessel v. Pickwick Stages System, Inc.*, 100 Cal.App.2d
22 682 (1929) and *Pacific States Finance Corp. v. Freitas*, 113 Cal.Supp. 757, 295 P.2d 804
23 (1931) offered to support Well Fargo's contention that it was the "holder of legal title" to
24 the Foundry Patterns are inapposite, in that these decisions apply to possessory liens for
25 work performed on motor vehicles. By its own terms, § 3051 and ergo § 3051a, do not
26 apply to motor vehicles.

5

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities listed at the address shown on the attached list or shown below.

See Attached

DATED:

4-25-05

By:

Barbara Mooradian

Deputy Clerk

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Commercial Enameling Co.
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